UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

MARRIOTT INTERNATIONAL, INC., D/B/A J.W. MARRIOTT LOS ANGELES AT L.A. LIVE

and

Case No. 21-CA-39556

UNITE HERE! LOCAL 11

RESPONDENT'S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION

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Dated: September 9, 2011

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Pursuant to Section 102.46 of the National Labor Relations Board's ("NLRB" or "Board") Rules and Regulations, Respondent Marriott International Inc., d/b/a J W. Marriott Los Angeles at L.A. Live ("Marriott") submits the following Exceptions to the July 22, 2011 Decision of Administrative Law Judge Clifford H. Anderson ("the ALJ") in the above-captioned matter. Marriott also submits its concurrently-filed Brief in Support of Respondent's Exceptions, which is incorporated by reference. ²

RESPONDENT'S EXCEPTIONS

1. Exception is taken to the ALJ's finding that Marriott's original and revised "Returning to Work Premises" rules violated the Act because they "invite[] reasonable employees to believe that Section 7 activity is prohibited without prior managerial permission." [Decision at 7:17-18; see also Decision at 8:12-13] In reaching this conclusion, the ALJ erroneously failed to consider the following undisputed facts: (1) there is no evidence that Marriott applied the rules in a

The Board granted Marriott's request for a three-week extension of time to file its Exceptions, ordering that the Exceptions be filed on or before September 9, 2011. Accordingly, Marriott's Exceptions and supporting brief are timely filed.

Citations to the record are as follows: the ALJ's decision is cited as "Decision [Page]:[Lines]"; the hearing transcript as "Tr. [Page]:[Lines]"; the General Counsel's exhibits as "GC Ex. [Number]"; and Marriott's exhibits as "Resp. Ex. [Number]." Citations to the record in support of the exceptions herein, where applicable, are more fully set forth in Respondent's Brief in Support of Exceptions.

manner that restricted the exercise of Section 7 rights; (2) there is no evidence that Marriott promulgated the rules in response to union activity; (3) there is no evidence that even a single employee ever believed the rules prohibit Section 7 activity; and (4) there is no evidence that Marriott has ever disciplined any employee for conducting Section 7 activity on or off of its property.

- 2. Exception is taken to the ALJ's finding that Marriott's original and revised "Returning to Work Premises" rules violated the Act because they "invite[] reasonable employees to believe that Section 7 activity is prohibited without prior managerial permission." [Decision at 7:17-18; see also Decision at 8:12-13] In reaching this conclusion, the ALJ erroneously failed to consider Marriott's open door policy, which provides that employees can ask managers about interpretation of any rule. [Resp. Ex. 1, p. 4; Resp. Ex. 2, p. 3.]
- 3. Exception is taken to the ALJ's finding that *Tri-County Medical Center*, 222 NLRB 1089 (1976) stands for the broad proposition that any no access rule (even one that specifically excludes outside non-working areas) is invalid if management has discretion to make limited exceptions and it is not uniformly applied to all employees "seeking access to the plant for any purpose." [Decision at 5:7-17.]
- 4. Exception is taken to the ALJ's finding that Marriott's original and revised "Returning to Work Premises" rules violated the Act on the ground that the "access restriction [was] not sufficiently limited." [Decision at 7:16-17.] In reaching this conclusion, the ALJ erroneously disregarded any review or analysis of *Crowne Plaza Hotel*, 352 NLRB 382 (2008), which is directly on point and would hold that Marriott's "Returning to Work Premises" rules are valid. While *Crowne Plaza Hotel* was based on a 2 member majority, nothing suggests that the reasoning of the decision or the current state of the law was wrongly stated.

- 5. Exception is taken to the ALJ's finding that Marriott's original and revised "Returning to Work Premises" rules violated the Act on the ground that the "access restriction [was] not sufficiently limited." [Decision at 7:16-17.] In reaching this conclusion, the ALJ erroneously misinterpreted *Lafayette Park Hotel*, 326 NLRB 824 (1998) to find that its holding is only limited to restrictions placed on hotel food and beverage outlets. [Decision at 7:1-4.] Nothing in the *Lafayette Park Hotel* opinion suggests that the holding should be limited in such a manner.
- 6. Exception is taken to the ALJ's finding that Marriott's revised "Returning to Work Premises" rule violated the Act because the term "property" in the revised rule "may be construed as a more expansive term" than use of the term "hotel" in the original rule. [Decision at 8:9-11.] In reaching this conclusion, the ALJ erroneously failed to consider the fact that both the original and the revised "Returning to Work Premises" rules specifically mention that the rules do not apply to "parking areas or other outside non-working areas." [Resp. Ex. 1, p.6; Resp. Ex. 2, p.43.] The ALJ fails to address how Marriott employees would be "further" confused about the "scope of the access restriction rule" [Decision at 8:10-11] even though employees are clearly not excluded from using the parking areas and other outside non-working areas on the property.
- 7. Exception is taken to the ALJ's finding that Marriott's original and revised "Returning to Work Premises" rules violated the Act on the ground that the "rule has not been clearly disseminated to all employees" after November 2010. [Decision at 7:20-21; *see also* Decision at 8:16-19.] In reaching this conclusion, the ALJ erroneously failed to consider the fact that a revised and substantially similar "Returning to Work Premises" rule was distributed to all newly hired employees after November 2010. [Tr. 41, 43.] Marriott has hired over 100 employees since the new L.A. Live handbook was issued and each of these new hires was provided the new

handbook. [Tr. 43.] Under such circumstances, the original employee handbook would apply to all employees hired prior to November 2010 and the revised handbook would apply to all subsequently hired employees.

- 8. Exception is taken to the ALJ's finding that Marriott's original and revised "Use of Hotel/Property Facilities" rules violated the Act because they "could confuse reasonable employees into believing that they need to obtain prior managerial approval before engaging in activity protected under the Act." [Decision at 8:36-38; *see also* Decision at 9:44-47.] In reaching this conclusion, the ALJ erroneously failed to consider that Marriott's rule pertains to off-duty employees who want to use the hotel facilities like any other *guest* of the hotel. Under such circumstances, the off-duty would be treated like *guests* not employees and there would be no confusion regarding Section 7 rights because guests do not have such rights.
- 9. Exception is taken to the ALJ's finding that Marriott's original and revised "Use of Hotel/Property Facilities" rules violated the Act because they "could confuse reasonable employees into believing that they need to obtain prior managerial approval before engaging in activity protected under the Act." [Decision at 8:36-38; *see also* Decision at 9:44-47.] In reaching this conclusion, the ALJ erroneously failed to consider the following undisputed facts: (1) there is no evidence that Marriott applied the rules in a manner that restricted the exercise of Section 7 rights; (2) there is no evidence that Marriott promulgated the rules in response to union activity; (3) there is no evidence that even a single employee ever believed the rules prohibit Section 7 activity; and (4) there is absolutely no evidence that Marriott has ever disciplined any employee for conducting Section 7 activity on or off of its property.
- 10. Exception is taken to the ALJ's finding that Marriott's original and revised "Use of Hotel/Property Facilities" rules violated the Act because they "could confuse reasonable

employees into believing that they need to obtain prior managerial approval before engaging in activity protected under the Act." [Decision at 8:36-38; *see also* Decision at 9:44-47.] In reaching this conclusion, the ALJ erroneously failed to consider Marriott's open door policy, which provides that employees can ask managers about interpretation of any rule. [Resp. Ex. 1, p.4; Resp. Ex. 2, p.3.]

- 11. Exception is taken with the ALJ's finding that Marriott's original and revised "Use of Hotel/Property Facilities" rules violated the Act because they do not "limit access solely with respect to the interior of the premises and other working areas." [Decision at 8:46-47; *see also* Decision at 9:34-39.] In reaching this conclusion, the ALJ erroneously failed to give Marriott's rules "a reasonable reading" and "refrain from reading particular phrases in isolation." *Martin Luther Memorial Home*, 343 NLRB 646, 646 (2004); *Crowne Plaza*, 352 NLRB at 383; *see also Lafayette Park*, 326 NLRB at 825, 827. Marriott's "Use of Hotel/Property Facilities" rule should have been construed together with its "Returning to Work Premises" rule, such that the "Use of Hotel/Property Facilities" rule would inherently include an exclusion for parking and other nonworking areas similar to the "Returning To Work Premises" rule.
- 12. Exception is taken to the ALJ's finding that the "undisputed record evidence shows that there are outside non-work areas, such as the outside patio connected to the mixing-room bar area." [Decision at 8:43-44.] The ALJ erroneously failed to consider the testimony of Marriott's Human Resources Director who testified that this exterior area is simply an extension of the hotel's mixing-room bar and it is surrounded by a gate which separates it from the public. [Tr. 63-64.] The primary entrance to the patio is through the hotel itself, however, if someone uses the external gate to enter the patio, they would still be considered a guest of the hotel and would

be served by any available waiters/waitresses. [*Id.*] Clearly, this evidence reveals that this outside patio is a guest facility located within Marriott's premises.

- 13. Exception is taken to the ALJ's finding that Marriott's original and revised "Use of Hotel/Property Facilities" rules violated the Act because they do not "limit access solely with respect to the interior of the premises and other working areas." [Decision at 8:46-47; *see also* Decision at 9:34-39.] In reaching this conclusion, the ALJ erroneously failed to consider the evidence which revealed that Marriott does not have any guest facilities outside of its property. [Tr. 44-45, 51, 58-59.] Therefore, parking areas and other outside non-working areas would be inherently excluded from the scope of Marriott's "Use of Hotel/Property Facilities" rule.
- 14. Exception is taken to the ALJ's finding that Marriott's original and revised "Use of Hotel/Property Facilities" rules violated the Act on the ground that the "rule has not been clearly disseminated to all employees" after November 2010. [Decision at 8:47-49; *see also* Decision at 9:47-10:2.] In reaching this conclusion, the ALJ erroneously failed to consider that a revised and substantially similar "Use of Property Facilities" rule was distributed to all newly hired employees after November 2010. [Tr. 41, 43.] Marriott has hired over 100 employees since the new L.A. Live handbook was issued and each of these new hires was provided the new handbook. [Tr. 43.] Under such circumstances, the original employee handbook would apply to all employees hired prior to November 2010 and the revised handbook would apply to all subsequently hired employees.
- 15. Exception is taken to those portions of the ALJ's conclusions of law [Decision at 10:14-11:22] that in any way conflict with the above-noted exceptions.

- 16. Exception is taken to the ALJ's proposed remedy [Decision at 11:26-41] which is premised on inappropriate findings of violations of Section 8(a)(1) of the Act for the reasons set forth in the exceptions above.
- 17. Exception is taken to those portions of the ALJ's recommended order [Decision at 12:1-13:3], including the appendix, that in any way conflict with the above-noted exceptions.

For the foregoing reasons, the ALJ's findings and conclusions had no basis in fact or in law and should not be adopted by the Board. The Amended Complaint should be dismissed.

Dated: September 9, 2011

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 9, 2011, a copy of **Respondent's Exceptions To The Administrative Law Judge's Decision** was submitted by e-filing to the National Labor Relations Board. I further certify that I emailed the foregoing document to the following in accordance with Board Rules & Regulations Rule 102.114(i):

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